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Robert J Benkowski

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EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

11/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

Applicant's arguments filed 11/6/08 have been fully considered but they are not persuasive. The argument regarding the 112 second paragraph rejection is not persuasive since the vague language used in claims 21-23 is still present in the claims. In addition, the applicant argues claim 1 includes "isolated" and it is unclear why claim 1 is not rejected. It is suggested to clarify claim 1 to positively recite a step of isolating the flow contribution. For claims 22 and 23, it is suggested to state what element is performing the functions listed in the claims and to have an element to sense the systolic flow rate.

The applicant argues on page 8 of the Remarks that the Examiner acknowledges that Nagyszalancyzy fails to disclose "isolating/extracting/separating the diastolic flow rate from the other flow rates". This is a correct statement, but the applicant appears to be interpreting it differently. The Examiners statement on page 4 of the office action addresses Nagyszalancyzy lack of teaching of the isolation of the diastolic flow rate from the other flow rates. This was directed to claims 21-23. Claim 1 only states the isolated flow contribution is monitored. The claim is a comprising claim, an open ended claim, and does not preclude the monitoring of the isolated flow contribution above the mean flow rate. Also, the claim does not state what the signal is isolated from. Finally, no specific step of isolating the flow rate has been provided.

The applicant argues that Nagyszalancyzy does not "extract" a flow contribution as previously acknowledged in the office action. This argument is not persuasive as similarly pointed out in the previous paragraph. In addition, as set forth in the rejection and response in the last office action, Nagyszalancyzy does "extract" the flow contribution from the sensor signal since "extract" has many definitions which Nagyszalancyzy's system and method meet.

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The argument that the Office fails to provide prior art that teaches "monitoring...isolated", "changing...in response", "extracting...." or "varying the speed..." is not persuasive since the Nagyszalancyzy reference teaches most of these steps except for basing it on a diastolic flow rate separated from the systolic flow rate. The prior art references teach the use diastolic sensing, such as flow rate during diastole, and some in combination with a separate sensing of systole in order to operate the pump more efficiently to match the hearts pumping cycles.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Evanisko whose telephone number is 571 272 4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571 272 4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/
Primary Examiner, Art Unit 3762

GRE
11/20/08